

MEMORANDUM OF LAW

CONFIDENTIAL

ATTORNEY-CLIENT COMMUNICATION

DATE: June 10, 1996

TO: Tina Christiansen, Director, Development Services

FROM: City Attorney

SUBJECT: Public Records Request - List of Buildings Potentially
Containing Unreinforced Masonry

By memorandum dated June 5, 1996, you asked whether the attached list of buildings is a public record which must be released to the public upon request.

As you know, the California Public Records Act generally requires all written documents which are kept in the normal course of business by a public agency to be made available to the public upon request. The general theory behind the legislation is that documents prepared by public agencies utilizing public funds should be made available to the

public unless there is some overriding reason to keep a document confidential.

The Public Records Act is contained in Government Code Section 6250 et seq. Section 6254 contains a list of specific exemptions to the Public Records Act general requirement for disclosure. A copy of the specific exemptions is attached for your information. The only section in Section 6254 which can be argued to exempt the list of buildings from the requirement for public disclosure is subsection (f), which provides in pertinent part: "Any investigatory or security files compiled by any local agency for correctional, law enforcement, or licensing purposes... is exempt from the disclosure requirement."

Attached for your information is a memorandum of law on a similar public records issue prepared in 1977. You will note that the memorandum of law concluded that the records in question in that fact situation could be kept confidential under subsection (f) of Section 6254.

You noted in your memorandum that the list of buildings was assembled to provide notice to property owners of the proposed ordinance relating to unreinforced masonry buildings. Since that reason does not appear to fall within the exception of Section 6254(f) for investigatory files compiled by a local agency for correctional, law enforcement, or licensing purposes, it is my recommendation that we not attempt to use this section to justify a decision in favor of keeping the records confidential.

In addition, the intent of the legislature is toward disclosing this type of information, as expressed in the provision of Section 6254.7(c). That section specifies as follows:

All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of

subsequent action with respect to those notices and orders, are public records.

Another key section of the Public Records Act is Section 6255. The section provides as follows: "The agency shall justify withholding any record by demonstrating that...on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."

This section is used when a public agency feels that there is a strong argument to be made that a document, even though it does not fall within a specific exception category under Section 6254, nevertheless should be kept confidential on the basis that substantially greater harm would result from release of the document to the public than any benefits which could accrue from such release. I do not feel that this section could be successfully used in the case of the list of buildings.

However, if we are to release the list of buildings to the public and the press, we should make it absolutely clear on the document itself that the list represents only a cursory review of potential unreinforced masonry buildings and that the list was prepared in order to allow the City to give special notice to the owners of such buildings that the City was at that time considering adopting an ordinance relating to unreinforced masonry buildings. The cover letter on the document should indicate that a substantial portion of the buildings listed may not in fact be unreinforced masonry buildings.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug
Head Deputy City Attorney

HOV:cdk:060(270)(x043.2)

Attachments

ML-96-31